

# Municipal services

## Public-public partnerships as an external delivery mechanism

### Introduction

The legislature provides two options to a municipality when choosing an external service delivery mechanism after completion of the assessment process prescribed in section 78 of the Municipal System Act ('the Act').

This article is the second in a series dealing with the content of Chapter 8 of the Act and focuses on the option for municipalities to enter into partnerships with other public institutions (section 80(1)(a)), known as public-public partnerships (PUPs).

### What is a PUP?

The *White Paper on Local Government* suggests that municipalities conclude a service delivery agreement with 'other municipalities, or organs of state, municipal business enterprises, a section 21-company, private sector business, CBOs or NGOs, or water committees'. This reflects the mixture of the two options provided for in section 80 of the Act.

Apart from defining a 'municipal entity' the legislation assists in further unpacking the meaning of a PUP, especially if one reads section 80(1)(a) with section 76(b). A PUP can be defined in a narrow sense, as a partnership between public sector institutions, or in a broader sense as a partnership with another public sector institution or some form of public organisation, where neither partner seeks financial profit. The latter

## key points

- A PUP is one of two external service delivery mechanisms available to municipalities.
- It is a partnership between a municipality and another public sector institution or some form of public organisation where neither partner seeks financial profit.
- A municipality must develop a community participation programme and mechanism through which the community is consulted prior to entering into a PUP.

qualification is a key distinction between a PUP and a public-private partnership (PPP).

Comparing the wording of section 80(1)(a) with the above, it is clear that for local government purposes a PUP is a partnership in the broader sense.

### Establishment rules for a PUP

Section 80(1)(a) exempts a municipality from following the provisions in Part 3, Chapter 8 of the Act when entering into a PUP. The municipality thus need not follow a competitive selection process as outlined in sections 83 and 84 of the Act (see *LG Bulletin* 5(2): 11 for a discussion of this phase).

Prior to entering into a PUP, the municipality must develop a mechanism and a programme with a focus on community participation (see *LG Bulletin* 5(2): 10). Through the media the community must be consulted and informed about the proposed PUP (section 80(2)).

### Terms of a PUP service delivery agreement

Section 81(2) and (3) permits a municipality to negotiate the following terms with a PUP service provider:

- municipal funds may be made available to subsidise services to the poor;
- municipal staff may be transferred or seconded to the public partner;
- continuity of the service must be ensured;
- the municipality must take over the service, including all assets, on the agreement's expiry;
- responsibilities for the service provided may be assigned, such as undertaking social and eco-

conomic development directly linked to the provision of the service in question, and customer management; and

- tariffs for the service in question may be adjusted within the limitations set by the municipality.

## Checks and balances

In a PUP the municipality is the partner that is ultimately responsible for ensuring that the service is provided to the community. The legislature has built in numerous checks and balances (section 81(1), (4) and (5)) to enable a municipality to fulfil this responsibility. Service provision via a PUP service delivery agreement must be regulated, monitored and assessed through a municipality's performance management system. If the service falls within a development priority or objective (as set out in a municipality's IDP), the provisions of Chapter 5 of the Act also apply. The setting and adjustment of tariffs for the service in question must be controlled within a tariff policy determined by the municipality. A service agreement can only be amended by mutual agreement of the partners and no councillor or municipal official may share in any profits or receive any benefits from it.

## Conclusion

Municipalities are faced with finding new ways through which their developmental role and responsibilities towards their communities can be realised. One option is to enter into a PUP as a means of ensuring that efficiency and effectiveness is increased, service delivery costs are reduced and that municipal operations are improved. It seems that a PUP can be established more quickly and more easily than a PPP, but it still requires a service delivery agreement and prior community participation. In the next edition of the *Local Government Bulletin*, PPPs will be considered as the second external service delivery mechanism available to municipalities.

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